IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.607 OF 2005
IN
EXECUTION APPLICATION NO.21 OF 2005
IN
SUM.SUIT NO.3866 OF 2001

Mahesh Chandru Advani. ..Plaintiff.

V/s.

Mahesh Patel. ..Defendant.

And

Pervez Mahmood. ..Applicant.

Mr.Hakim Salim for Plaintiff.
Mr. Rajan Kakkar for applicant.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 15, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings and the accompanying documents.

2. It is seen that the applicant/claimant was put in possession of the disputed premises since 1989. The applicant has produced several documents to establish that position. It is the case of the applicant that he is in occupation of the disputed premises as tenant thereof. That case is supported by series of documents produced on record by the applicant.

3. In my opinion, the stand taken by the applicant is established from the documents as filed, that he is the tenant of the disputed premises. If it is so, applicant is entitled to relief in terms of prayer clause (a).

4. Counsel for the Judgment Creditor/plaintiff however, contends that the Judgment Debtor was seen in the disputed premises and was doing business from the said premises. It is not the case of the Judgment Creditor that the Judgment debtor was in exclusive possession of disputed premises as such. The fact that the Judgment debtor was seen in the premises, even if accepted as it is, that does not belie the stand of the applicant that he is tenant in respect of the disputed premises, which stand is supported by the documentary evidence. The documentary evidence which has been produced cannot be lightly discarded. In other words, merely because Judgment Debtor was operating from the disputed premises, as is contended by the plaintiff/Judgment creditor, that by itself cannot be the basis to contend that Judgment debtor has right, title, interest in the disputed premises. No positive evidence is brought on record to establish to the

contrary. In the circumstances, chamber summons ought to succeed in terms of prayer clause (a).

5. The chamber summons is therefore, made absolute in terms of prayer clause (a).

6. It is however, clarified that attachment is raised only in respect of the premises being Gala No.6, Ghoga Street, 91, Janmabhoomi Marg, Fort, Mumbai 400 001, occupied by the applicant as tenant and not in respect of the other premises, which have also been attached under the said order of attachment.

7. Ordered accordingly.